

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	No. D2-90-7
)	
MARC A. KATZ)	L-9501067
23161 Lake Center Drive, #200)	
Lake Forest, California 92630)	
)	
Certified Public Accountant)	
License No. CPA 20963,)	
)	
)	
Respondent.)	
_____)	

PROPOSED DECISION

This matter came on regularly for hearing before W. F. Byrnes, Administrative Law Judge of the Office of Administrative Hearings, at Laguna Niguel, California, on May 19, 1995. Loretta A. Nickerson, Deputy Attorney General, represented the complainant. The respondent represented himself. Evidence having been received and the matter submitted, the Administrative Law Judge finds the following facts:

I

Carol B. Sigmann made the Accusation and Petition to Revoke Probation, and the Supplemental Accusation and Petition to Revoke Probation, in her official capacity as Executive Officer of the Board of Accountancy.

II

A. On or about December 6, 1974, Certified Public Accountant License No. CPA 20963 was issued by the Board to respondent Marc A. Katz.

B. By stipulation and decision effective December 20, 1991, in Case No. AC-90-7, respondent's license was revoked; however, revocation was stayed and respondent was placed on three years probation on conditions including the following:

"1. Respondent shall obey all federal, California, other U.S. states and local laws including those rules relating to the practice of public accountancy in California.

.

10. Respondent shall make restitution to the Board in the amount of \$2,900, representing the Board's investigative costs in this case [by installments as described in paragraph 2 of the Accusation]...."

III

THE LILLO MATTER

A. In 1992, Elvira Lillo hired respondent to safeguard and disburse her funds for valid recurring expenses in the United States while she was out of the country.

B. From September, 1992, through December, 1993, respondent misappropriated funds entrusted to him by his client, Elvira Lillo, totalling more than \$4,850 while Ms. Lillo was out of the country. Respondent wrote numerous checks to himself from Ms. Lillo's bank account without either her permission or knowledge, including all of the checks itemized in paragraph 5(b) of the Accusation.

C. Respondent embezzled from this client simply because he was short of money. He was not caught until Ms. Lillo became suspicious as to her low bank balance, and traveled here from Argentina to confront him. Respondent admitted his embezzlement to the police, and delivered \$7,020 to them as restitution to Ms. Lillo for the amount he conceded he had stolen. Ms. Lillo did not want criminal charges filed, because that would cause her more international travel. Ms. Lillo is informed and believes that her credit record has been adversely affected by respondent's actions.

IV

THE FOTION MATTER

A. In or about 1987, John and Lorita Fotion hired respondent to perform ongoing tax work for themselves and their business. In or about August, 1990, the Fotions received a notice from the Internal Revenue Service ("IRS") that an adjustment had been made to their 1988 returns (which respondent had prepared), requiring additional taxes to be paid. They were

given 30 days to dispute the adjustments or file an appeal. The Fotions contacted respondent about this matter and mailed a copy of the document to respondent. Respondent told them not to worry and said that he would handle the matter. Thereafter, respondent took no action on the adjustment notice, and the 30-day period passed.

B. On or about February 4, 1991, the Fotions received a notice of tax deficiency from the IRS, based on the adjustments that had been made. The notice gave them 90 days to contest the deficiency. Once again, the Fotions promptly telephoned respondent and sent him a copy of the notice. Respondent took no action and the 90-day period passed. Despite this inaction, respondent continued to assure the Fotions that he would handle the matter.

C. On or about January 30, 1992, the Fotions received a notice that the IRS had levied their IRA fund. This levy caused a surrender charge for the fund in the amount of \$1,054, which they cannot recover. In addition, in January, 1992, the Franchise Tax Board of California sent the Fotions a notice of proposed additional tax, based on the IRS findings.

D. In or about February, 1992, respondent finally began to act, and requested a power of attorney from the Fotions. The Fotions promptly signed the document and delivered it to respondent. On or about March 1, 1992, the Fotions received notice of a federal tax lien. The Fotions telephoned respondent several times, but he did not return most of their calls. This tax lien caused the Fotions to be denied credit on at least one occasion, according to their information and belief.

E. In or about August, 1992, respondent finally met with the IRS, and some or all of the additional tax was abated as a result of that meeting. The tax lien was released on or about December 8, 1992.

F. Respondent's above-described conduct constituted continuous and repeated instances of gross negligence, causing injury to his clients.

G. In or about August, 1992, respondent billed the Fotions \$950 for his services in connection with the IRS matter. The Fotions refused to pay, and respondent refused to return their records to them. After several months and further demands by the Fotions, respondent finally agreed to return the records, only after he had been warned that his conduct was in violation of the Board's regulations.

V

It was not established that respondent violated condition No. 10 of his probation by failing to make any of his payments to the Board for its costs of investigation in Case NO. AC-90-7.

VI

Respondent does not appear to understand the consequences of his misconduct to his clients named herein, nor does he appear to comprehend the significance of the fact that he was already on probation when he committed those acts of misconduct. He characterizes his misconduct in both the Lillo and Fotion matters as "mistakes". His continued licensure would not be in the public interest.

VII

The Board has incurred costs of investigation and prosecution of this matter in the amount of \$17,213.46.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause exists for license discipline against respondent in the Lillo matter pursuant to Business and Professions Code sections 5100(f), (h), and (j) and Title 16, California Code of Regulations, sections 60 and 99(a) and (d).

II

Cause exists for license discipline against respondent in the Fotion matter pursuant to Business and Professions Code sections 5100(c) and (f) and Title 16, California Code of Regulations, section 68.

III

Respondent is in violation of condition No. 1 of his probation in Case No. AC-90-7, by reason of his violations of law found hereinabove.

IV

Cause exists for an order of restitution of costs to the Board pursuant to Business and Professions Code section 5107.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

Respondent's probation is revoked, and the stay of revocation in Case No. AC-90-7 is vacated.

II

Respondent's Certificate No. CPA 20963 is revoked.

III

Respondent shall pay the Board \$17,213.46 as restitution for its costs of investigation and prosecution.

DATED: 6-1-95



W. F. BYRNE
Administrative Law Judge
Office of Administrative Hearings

WFB:btm

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

MARC A. KATZ)
23161 Lake Center Drive, #200)
Lake Forest, California 92630)

No. AC-90-7

OAH No. L-9501067

Certified Public Accountant)
License No. CPA 20963,)

Respondent.)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Executive Secretary, Board of Accountancy as his/her Decision in the above-entitled matter.

This Decision shall become effective on September 6, 1995

IT IS SO ORDERED August 7, 1995.

BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

BY: 

btm

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 LORETTA NICKERSON
Deputy Attorney General, State Bar No. 149294
3 Department of Justice
110 West A Street, Suite 1100
4 Post Office Box 85266
San Diego, California 92186-5266
5 Telephone: (619) 645-2107
6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and) NO. D2-90-7
Petition to Revoke Probation)
12 Against:)

13 MARC A. KATZ)
23161 Lake Center Dr., Ste 200)
14 Lake Forest, CA 92630)

15 License No. 20963)

Respondent.)
16

SUPPLEMENTAL ACCUSATION
AND PETITION TO REVOKE
PROBATION

17 Complainant Carol B. Sigmann, as further cause for
18 disciplinary action, alleges:

19 PARTIES

20 11. Complainant is the Executive Officer of the
21 California State Board of Accountancy ("Board") and makes and
22 files this Supplemental Accusation and Petition to Revoke
23 Probation solely in her official capacity.

24 12. Complainant realleges each and every allegation of
25 Accusation and Petition to Revoke Probation Number D2-90-7, filed
26 on December 14, 1994 and incorporates them herein by reference.

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CHARGES AND ALLEGATIONS

15. Respondent is subject to disciplinary action pursuant to Code section 5100 based on the following:

16. In or about 1987, John and Lorita Fotion hired respondent to perform ongoing tax work for themselves and their business. In or about August 1990, the Fotions received a notice from the Internal Revenue Service ("IRS") that an adjustment had been made to their 1988 returns (which respondent had prepared), requiring additional taxes to be paid. They were given 30 days to dispute the adjustments or file an appeal. The Fotions contacted respondent about this matter and mailed a copy of the document to respondent. Respondent told them not to worry and said that he would handle the matter. Thereafter, respondent took no action on the adjustment notice, and the 30-day period passed.

17. On or about February 1, 1991, the Fotions received a notice of tax deficiency from the IRS, based on the adjustments that had been made. The notice gave them 90 days to contest the deficiency. Once again, the Fotions promptly telephoned respondent and sent him a copy of the notice. Respondent took no action and the 90-day period passed. Despite this inaction, respondent continued to assure the Fotions that he would handle matter and that they should not worry about it.

18. In or about July 1991, an audit meeting was scheduled with the IRS. Respondent told the Fotions he would handle it. Respondent failed to appear at the meeting.

19. On or about January 30, 1992, the Fotions received

1 a notice that the IRS had levied their IRA fund. This levy
2 caused a surrender charge for the fund in the amount of
3 \$1,054.00. In addition, in January 1992, the Franchise Tax Board
4 of California sent the Fotions a notice of proposed additional
5 tax, based on the IRS findings.

6 20. In or about February 1992, respondent finally began
7 to act, and requested a power of attorney from the Fotions. The
8 Fotions promptly signed the document and delivered it to
9 respondent. On or about March 1, 1992, the Fotions received
10 notice of a federal tax lien. The Fotions attempted to telephone
11 respondent several times, but he did not return their calls.
12 This tax lien caused the Fotions to be denied credit on at least
13 one occasion.

14 21. In or about August 1992, respondent finally met
15 with the IRS, and some or all of the additional tax was abated as
16 a result of that meeting. The tax lien was released on or about
17 December 8, 1992.

18 22. In or about August 1992, respondent billed the
19 Fotions \$950 for his services in connection with the IRS matter.
20 The Fotions refused to pay, and respondent refused to return
21 their records to them. After several months and further demands
22 by the Fotions, respondent finally agreed to return the records.

23 23. Respondent has subjected his license to discipline
24 pursuant to Code section 5100(c) on the basis of gross
25 negligence, as more particularly set forth in paragraphs 16 - 21
26 above, in that he failed to use due diligence in dealing with the
27 IRS audit that he agreed to handle for the Fotions, causing

1 monetary and credit injury to the Fotions through his delay and
2 inaction.

3 24. Respondent has subjected his license to discipline
4 pursuant to Code section 5100(f) and CCR section 68, as more
5 particularly alleged in paragraph 22 above, in that he refused to
6 return client records after requests by the clients.

7 WHEREFORE, complainant requests that a hearing be held
8 on the matters alleged herein, and that following said hearing,
9 the Board issue a decision:

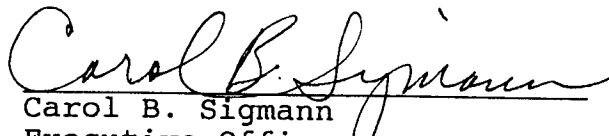
10 1. Revoking probation, setting aside the stayed order
11 and thereby revoking Certificate No. 20963 heretofore issued
12 to respondent;

13 2. Revoking or suspending Certificate No. 20963
14 heretofore issued to respondent;

15 3. Ordering respondent to pay to the Board all
16 reasonable costs of investigation and prosecution of this
17 case, including, but not limited to, attorneys fees.

18 4. Taking such other and further action as the Board
19 deems appropriate to protect the public health, safety and
20 welfare.

21 DATED: March 28, 1995

22
23 
24 Carol B. Sigmann
25 Executive Officer
26 Board of Accountancy
27 Department of Consumer Affairs
State of California

Complainant

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 LORETTA A. NICKERSON,
Deputy Attorney General, State Bar No. 149294
3 Department of Justice
110 West A Street, Suite 1100
4 Post Office Box 85266
San Diego, California 92186-5266
5 Telephone: (619) 645-2107

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation) NO. D2-90-7
Against:)
12)
MARC A. KATZ) ACCUSATION AND
13 23161 Lake Center Drive, #200) PETITION TO
Lake Forest, California 92630,) REVOKE PROBATION
14)
Certified Public Accountant)
15 License No. CPA 20963,)
16 Respondent.)

17
18 Complainant Carol B. Sigmann, as cause for disciplinary
19 action, alleges the following:

20 **PARTIES**

21 1. Complainant is the Executive Officer of the
22 California State Board of Accountancy ("Accountancy Board") and
23 makes and files this accusation solely in her official capacity.

24 **License Status**

25 2. On or about December 6, 1974, Certified Public
26 Accountant License No. CPA 20963 was issued by the Accountancy
27 Board to Marc A. Katz ("respondent"). By stipulation and

decision effective December 20, 1991, in the Matter of the Accusation Against Marc Katz, case number D2-90-7, respondent's license was revoked; however, revocation was stayed and respondent was placed on three (3) years probation and conditions including the following:

A. Respondent shall obey all laws including those relating to the practice of public accountancy in California;

B. Respondent shall make restitution to the Accountancy Board in the amount of \$2900 (two thousand nine hundred dollars) no later than December 20, 1994, by making quarterly payments on September 30, 1992 (later modified and continued by stipulation until September 30, 1993) and at the end of every quarter thereafter, except that the last payment shall be due on or before December 20, 1994, by submitting a check in the amount of \$241.67 (later modified, by the same stipulation referred to in the parenthetical above, to \$483.34) directly to the Accountancy Board.

JURISDICTION

3. This accusation is made in reference to the following statutes of the California Business and Professions Code ("Code"):

a. Section 5100 provides, in pertinent part, that the Accountancy Board may revoke, suspend or refuse to renew any certificate issued by the Accountancy Board, or may censure the holder of any such certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

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Section 5100 (f): Willful violation of this chapter or any rule or regulation promulgated by the accountancy under the authority granted under this chapter.

. . .

Section 5100 (h): Fiscal dishonesty or breach of fiduciary responsibility of any kind.

. . .

Section 5100 (j): Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

b. Section 5107 provides, in pertinent part, that the Accountancy Board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found in violation of section 5100 (a), (b), (c), (h), (i) or (j), to pay to the Accountancy Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees.

4. This accusation is made in reference to the following regulations of the California Code of Regulations (formerly the California Administrative Code), title 16:

a. Section 60 provides, in pertinent part, that a licensee shall not engage in conduct which constitutes

1 fiscal dishonesty or breach of fiduciary responsibility
2 of any kind.

3 b. Section 99 provides, in pertinent part, that the
4 following acts, among others, are substantially related to
5 the qualifications, functions or duties of a certified
6 public accountant such that it evidences a substantial
7 degree of present or potential unfitness of a certified
8 public accountant to perform the functions authorized by his
9 certificate in a manner consistent with the public health,
10 safety, or welfare:

11 Section 99(a): Fiscal dishonesty or breach of
12 fiduciary responsibilities of any kind;

13 . . .

14 Section 99(d): Violation of any of the provisions
15 of Chapter I, Division III of the Business and
16 Professions Code or willful violation of any rule or
17 regulation of the board.

18 c. Section 99.1 provides, in pertinent part, that when
19 considering the suspension or revocation of a certificate,
20 the board will consider the following criteria, among
21 others, in evaluating rehabilitation and eligibility for a
22 certificate:

23 . . .

24 Section 99.1(2): Evidence of any acts committed
25 subsequent to the acts or offenses under consideration
26 which also could be considered grounds for denial,
27 suspension or revocation.

. . .

Section 99.1(4): The extent to which the licensee has complied with any terms of probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

FACTS

5. Respondent Marc A. Katz subjected his license to discipline under Business and Professions Code section 5100(j) in that he embezzled, stole, or misappropriated funds from his client, Elvira Lillo, as follows:

a. In 1992, Elvira Lillo hired respondent to safeguard and disburse her funds for valid recurring expenses in the United States while she was out of the country.

b. From September 1992, through December 1993, respondent misappropriated funds entrusted to him by his client, Elvira Lillo, totalling at least \$4,850 while Ms. Lillo was out of the country. Respondent wrote numerous checks to himself from Ms. Lillo's bank account without either her permission or knowledge, including the following checks in the following amounts:

<u>CHECK NO.</u>	<u>DATE OF CHECK</u>	<u>CHECK AMOUNT</u>	<u>INVOICE AMOUNT</u>	<u>INVOICE DATE</u>	<u>MISAPPROPRIATED AMOUNT (MINIMUM)</u>
579	8-6-93	\$2,100	\$ 0	NONE	\$2,100
578	7-28-93	\$ 500	\$ 0	NONE	\$ 500
575	7-16-93	\$ 500	\$ 300	12-31-93	\$ 200
573	6-17-93	\$ 500	\$ 350	11-10-93	\$ 150
522	2-27-93	\$ 500	\$ 400	9-14-93	\$ 100

	<u>CHECK NO.</u>	<u>DATE OF CHECK</u>	<u>CHECK AMOUNT</u>	<u>INVOICE AMOUNT</u>	<u>INVOICE DATE</u>	<u>MISAPPROPRIATED AMOUNT (MINIMUM)</u>
3	521	2-16-93	\$ 600	\$ 500	8-2-93	\$ 100
4	514	1-25-93	\$ 500	\$ 500	7-16-93	\$ 0
5	513	1-5-93	\$ 500	\$ 500	6-10-93	\$ 0
6	512	12-30-93	\$ 850	\$ 400	5-14-93	\$ 450
7	501	11-17-92	\$1,000	\$ 400	3-31-93	\$ 600
8	446	11-3-92	\$ 350	\$ 450	2-27-93	\$ (100)
9	445	10-23-92	\$1,000	\$ 450	12/92:1/93	\$ 550
10	444	10-19-92	\$ 500	\$ 300	12-16-92	\$ 200
11	441	9-25-92	\$ 500	\$ 500	11-11-92	\$ 0
12	<u>TOTALS</u>		\$9,900	\$5,050		\$4,850

13 6. Respondent subjected his license to discipline
14 under Business and Professions Code section 5100 (h) in that he
15 engaged in fiscal dishonesty and breached his fiduciary
16 responsibility to his client, Elvira Lillo, as follows:

17 a. In 1992 through 1993, respondent failed to act in
18 accordance with Ms. Lillo's best interests in that he
19 misappropriated her funds by writing numerous checks to himself
20 without her knowledge or approval while entrusted to safeguard
21 and disburse her funds for valid recurring expenses while she was
22 out of the country. Respondent's conduct adversely affected Ms.
23 Lillo's credit record.

24 b. Complainant incorporates by reference paragraph
25 5(a) as though fully set forth herein.

26 7. Respondent subjected his license to discipline
27 under Business and Professions Code section 5100 (f) in that he

1 willfully violated federal, state and local laws including those
2 relating to the practice of Public Accountancy, as follows:

3 a. Respondent willfully violated accountancy rules
4 and regulations when he withdrew entrusted funds from a client's
5 bank account without the client's knowledge or permission.

6 b. Complainant incorporates by reference paragraphs
7 5(a) and 6(a) above, as though fully set forth herein.

8 8. Respondent subjected his license to discipline
9 under California Code of Regulations (formerly the California
10 Administrative Code), title 16, section 60 in that he engaged in
11 conduct which constitutes dishonesty or breach of fiduciary
12 responsibility of any kind, as follows:

13 a. Complainant incorporates by reference paragraphs 5
14 through 7 above, as though fully set forth herein.

15 9. Respondent has violated the terms of probation set
16 forth in the settlement and decision in the matter of the
17 Accusation Against Marc Katz, case number D2-90-7, in that he has
18 failed to obey all laws including those relating to the practice
19 of public accountancy in California, as follows:

20 a. Complainant incorporates by reference as though
21 fully set forth herein, the Stipulation and Decision in the
22 Matter of the Accusation Against Marc Katz, case number D2-90-7.

23 b. Complainant incorporates paragraphs 5 though 8
24 above as though fully set forth herein.

25 10. Respondent has violated the terms of probation set
26 forth in the settlement and decision in the matter of the
27 Accusation Against Marc Katz, case number D2-90-7, in that he has

1 failed to reimburse the Accountancy Board for reasonable costs in
2 the amount of \$2900 (two thousand nine hundred dollars) in
3 accordance with paragraph ten of said decision (and in accordance
4 with a subsequent stipulation dated August 7, 1993) by making
5 quarterly payments on September 30, 1993, and at the end of every
6 quarter thereafter until the entire amount is paid in full e.g.,
7 through December 30, 1994, by submitting a check directly to the
8 Accountancy Board.

9 a. Respondent failed to make his quarterly cost-
10 reimbursement payment to the Accountancy Board that was due on
11 September 30, 1994.

12 PRAYER

13 WHEREFORE, complainant requests that a hearing be held
14 on the matters alleged herein, and that following said hearing,
15 the Board makes its order:

- 16 1. Revoking probation, setting aside the stayed order
17 and thereby revoking license number CPA 20963,
18 issued to respondent Marc A. Katz; or
- 19 2. Revoking or suspending Certified Public Accountant
20 License Number CPA 20963, issued to respondent
21 Marc A. Katz; and
- 22 3. Directing respondent Marc A. Katz to pay to the
23 Board a reasonable sum for its investigative and
24 enforcement costs of this action; and

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27 ///

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 DAVID F. TAGLIENTI,
Deputy Attorney General
3 Department of Justice
110 West A Street, Suite 700
4 San Diego, California 92101
Telephone: (619) 238-3386

5 Attorneys for Complainant
6
7

8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)
Against:)

NO. AC-90-7

12 MARC KATZ)
13 #1 Parkman Road)
Laguna Niguel, CA 92677)
14 License No. RA20963)

STIPULATION IN
SETTLEMENT AND DECISION

15 Respondent.)
16

17 Carol B. Sigmann, Executive Officer of the Board of
18 Accountancy of the State of California, by and through her
19 attorney, Daniel E. Lungren, Attorney General of the State of
20 California, by David F. Taglienti, Deputy Attorney General, and
21 Marc Katz ("respondent"), hereby stipulate as follows:

22 1. The Board of Accountancy ("the Board"), acquired
23 jurisdiction over respondent by reason of the following:

24 A. Respondent was duly served with a copy of the
25 Accusation, Statement to Respondent, Request for Discovery, Form
26 Notice of Defense and copies of Government Code sections 11507.5,
27 1507.6 and 11507.7 as required by section 11503 and 11505, and

1 respondent timely filed a Notice of Defense under section 11506
2 of the Government Code. A copy of the Accusation is attached
3 hereto as Exhibit "A" and incorporated by reference as though
4 fully set forth herein.

5 B. Respondent has received and read the
6 Accusation which is presently on file as Case No. AC-90-7, before
7 the Board. Respondent understands the nature of the charges
8 alleged in the above-entitled Accusation and that said charges
9 and allegations would constitute cause for imposing discipline
10 upon his license to practice public accountancy heretofore issued
11 by the Board.

12 2. Respondent is aware of each of his rights,
13 including the right to a hearing on the charges and allegations,
14 to confront and cross-examine witnesses who would testify against
15 respondent, to present evidence in his favor and call witnesses
16 on his behalf, to testify himself, to contest the charges and
17 allegations, and any other right which may be accorded to
18 respondent under the California Administrative Procedure Act
19 (Gov. Code, § 11500 et seq.). Respondent is also aware of his
20 right to reconsideration, to review by the superior court, and to
21 appeal to any other court. Respondent understands that in
22 signing this stipulation rather than contesting the Accusation,
23 he is enabling the Board to issue the following order from this
24 stipulation without further process.

25 3. Respondent freely and voluntarily waives each and
26 every right set forth above.

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1 4. Admissions made by respondent herein are for the
2 purpose of this proceeding only and any other disciplinary
3 proceedings by the Board, and shall have no force and effect in
4 any other case or proceeding. In the event this settlement is
5 not adopted by the Board, the stipulation made herein shall be
6 inadmissible in any proceeding involving the parties.

7 5. Respondent admits that he is guilty of violating
8 section 5100(f) of the Business and Professions Code, as well as
9 sections 56 and 57 of the California Code of Regulations, as
10 alleged in paragraphs 5, 6 and 7 of Accusation No. AC-90-7.

11 6. Based upon the foregoing, it is stipulated and
12 agreed that the Board may issue the following as its decision in
13 this case.

14 ORDER

15 IT IS HEREBY ORDERED that License No. RA20963,
16 heretofore issued to Marc Katz is revoked. However, said
17 revocation is stayed and respondent is placed on probation for
18 three (3) years on the following terms and conditions:

19 1. Respondent shall obey all federal, California,
20 other U.S. states and local laws including those rules relating
21 to the practice of public accountancy in California.

22 2. Respondent shall submit quarterly written reports
23 to the Board on a form provided by the Board.

24 3. Respondent shall comply with all citations.

25 4. Respondent shall make personal appearances and
26 report to the Administrative Committee at the Board's

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1 notification, provided such notification is accomplished in a
2 timely manner.

3 5. Respondent shall cooperate fully with the Board of
4 Accountancy, and any of its agents or employees in their
5 supervision of his compliance with the terms and conditions of
6 this probation including the Board's Probation Surveillance
7 Program.

8 6. In the event respondent should leave California to
9 reside or practice outside this state, respondent must notify the
10 Board in writing of the dates of departure and return. Periods
11 of residency or practice outside the state shall not apply to
12 reduction of the probationary period.

13 7. If respondent violates probation in any respect,
14 the Board, after giving respondent notice and an opportunity to
15 be heard, may revoke probation and carry out the disciplinary
16 order that was stayed. If an accusation or petition to revoke
17 probation is filed against respondent during probation, the Board
18 shall have continuing jurisdiction until the matter is final, and
19 the period of probation shall be extended until the matter is
20 final.

21 8. Respondent shall be subject to, and shall permit, a
22 general review of the respondent's professional practice. Such
23 review shall be conducted by representatives of the Board
24 whenever designated by the Administrative Committee, provided
25 notification of such review is accomplished in a timely manner.

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1 9. Respondent shall make restitution in the sum of
2 \$6750 to the individuals identified as "clients" in Accusation
3 No. AC-90-7. Beginning on March 31, 1992, and at the end of
4 every quarter thereafter, except that the last payment shall be
5 due on or before December 20, 1994, respondent shall submit to
6 the Board, for distribution in due course, ten separate checks
7 made payable to the following recipients, in the following
8 denominations:

- 9 1. Donald Brownlee, \$52.09;
- 10 2. Don Doty, \$52.09;
- 11 3. Joanne Hudspeth, \$52.08;
- 12 4. Philip Hiatt, \$31.25;
- 13 5. Gary Cook, \$81.25;
- 14 6. Richard Overstreet, \$81.25;
- 15 7. Charles Bartlett, \$62.50;
- 16 8. Charles English, \$50.00;
- 17 9. Steven Kerwin, \$50.00; and
- 18 10. Roberto Loiederman, \$50.00.

19 10. Respondent shall make restitution to the Board in
20 the amount of \$2900, representing the Board's investigative costs
21 in this case. On August 1, 1992, respondent shall submit a check
22 in the amount of \$483.34 directly to the Board. On September 30,
23 1992, and at the end of every quarter thereafter, except that the
24 last payment shall be due on or before December 20, 1994,
25 respondent shall submit a check in the amount of \$241.67 directly
26 to the Board.

27 ///

1 10a. As part of probation, respondent is suspended
2 from the practice of public accounting for the period of ten (10)
3 days, beginning the effective date of decision.

4 11. Respondent shall successfully participate in and
5 complete a CPE course in Ethics within the first year of
6 probation.

7 I concur in the stipulation and order.

8 DATED: 1-22-92


9 DANIEL E. LUNGREN, Attorney General
10 of the State of California

11 
12 DAVID F. TAGLIENTI
13 Deputy Attorney General

14 Attorneys for Complainant

15 I have read the above stipulation fully. I understand
16 that by its terms I will be waiving certain rights accorded me
17 under California law. I also understand that by its terms the
18 Board of Accountancy will issue a decision and order on this
19 stipulation whereby my license to practice public accountancy
20 will be subject to certain terms and conditions. I agree to the
21 above stipulation in settlement.

22 DATED: 1-13-92

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24 
25 MARC KATZ
26 Respondent

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IT IS SO ORDERED this 14th day of February,
1992.

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1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 RONALD A. CASINO,
Deputy Attorney General
3 Department of Justice
110 West A Street, Suite 700
4 San Diego, California 92101
Telephone: (619) 237-7329

5 Attorneys for Complainant

6
7 BEFORE THE
8 BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA
11

12 In the Matter of the Accusation)
Against:)

NO. AC-90-7

13 MARC KATZ)
14 #1 Parkman Road)
Laguna Niguel, CA 92677)

ACCUSATION

15 License No. RA20963)

16 Respondent.)
17

18 COMES NOW Complainant Carol B. Sigmann, who as cause
19 for disciplinary action, alleges:

20 1. Complainant is the Executive Officer of the
21 California State Board of Accountancy (hereinafter the "Board")
22 and makes and files this accusation solely in her official
23 capacity.

24 LICENSE STATUS

25 2. On or about December 6, 1974, License No. RA20963
26 was issued by the Board to Marc Katz (hereinafter "respondent"),

27 ///

1 and at all times relevant herein, said License was, and currently
2 is, in full force and effect.

3 STATUTES

4 3. This accusation is made in reference to the
5 following statutes of the California Business and Professions
6 Code (hereinafter "Code"):

7 a. Section 5100(f) which provides for discipline for
8 willful violation of any provision of the chapter or any
9 rule or regulation promulgated by the Board under the
10 authority of the chapter.

11 4. This accusation is made in reference to the
12 following regulations of Title 16, California Code of Regulations
13 (hereinafter "CCR"), (formerly the California Administrative
14 Code):

15 a. Section 56 which prohibits a licensee from
16 accepting a commission for a referral to a client of
17 products or services of others.

18 b. Section 57 which prohibits a licensee who is
19 engaged in the practice of accounting from concurrently
20 engaging in any other business or occupation which impairs
21 his objectivity in rendering professional services.

22 FACTS

23 5. Respondent Marc Katz is subject to disciplinary
24 action on account of the following:

25 a. Respondent received commissions from a tax shelter
26 investment representative for the referral of several of

27 ///

1 respondent's clients to the shelter. The payments were as
2 follows:

3 (1) On or about October 13, 1980, respondent
4 received a commission in the amount of \$1,250 for the
5 referral of clients B. and D. to the tax shelter investment.

6 (2) On or about October 23, 1980, respondent
7 received a commission in the amount of \$625 for the referral
8 of client J.H. to the tax shelter investment.

9 (3) On or about September 22, 1981, respondent
10 received a commission in the amount of \$375 for the referral
11 of client P.H. to the tax shelter investment.

12 (4) On or about November 24, 1981, respondent
13 received a commission in the amount of \$1,950 for the
14 referral of clients C. and O. to the tax shelter investment.

15 (5) On or about December 31, 1981, respondent
16 received a commission in the amount of \$750 for the referral
17 of client C.B. to the tax shelter investment.

18 (6) On or about October 6, 1982, respondent
19 received a commission in the amount of \$600 for the referral
20 of client C.E. to the tax shelter investment.

21 (7) On or about November 2, 1982, respondent
22 received a commission in the amount of \$600 for the referral
23 of client K. to the tax shelter investment.

24 (8) On or about January 5, 1983, respondent
25 received a commission in the amount of \$600 for the referral
26 of client L. to the tax shelter investment.

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1 b. On or about June 11, 1982, respondent entered into
2 an agreement with the aforementioned tax shelter investment
3 representative to receive a 4% commission on certain limited
4 partnership investment business, including the tax shelter
5 in question, placed by respondent with the representative.

6 6. As a result of the conduct described in paragraph
7 5a above, respondent is subject to disciplinary action pursuant
8 to the following statutes and rules:

9 a. Code section 5100(f) - by willfully violating
10 Title 16, CCR, sections 56 and 57.

11 b. Title 16, CCR, Section 56 - by accepting a
12 commission for a referral to a client of products or
13 services of others.

14 c. Title 16, CCR, Section 57 - by engaging
15 concurrently in public accounting and another business or
16 occupation which impairs the licensee's objectivity in
17 rendering professional services.

18 7. As a result of the conduct described in paragraph
19 5b above, respondent is subject to disciplinary action pursuant
20 to the following statutes and rules:

21 a. Code section 5100(f) - by willfully violating Title
22 16, CCR, Section 57.

23 b. Title 16, CCR, Section 57 - by engaging
24 concurrently in public accounting and another business or
25 occupation which impairs the licensee's objectivity in
26 rendering professional services.

27 ///

WHEREFORE, complainant requests that the Board hold a hearing on the matters alleged herein, and that following said hearing, the Board issue a decision:

1. Revoking or suspending License Number RA20963,
heretofore issued to respondent Marc Katz;

2. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

DATED:

1/10/91

Carol B. Sigmann
Carol B. Sigmann
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant